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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/912,652	07/24/2001	Vladimir Segal	30-5004 DIV2	6609
7590	01/19/2005			EXAMINER
DAVID G. LATWESEN, PH.D. WELLS, ST. JOHN, ROBERTS, GREGORY & MATKIN P.S. 601 W. FIRST AVENUE, SUITE 1300 SPOKANE, WA 99201-3828			WILKINS III, HARRY D	
			ART UNIT	PAPER NUMBER
			1742	
			DATE MAILED: 01/19/2005	

Please find below and/or attached an Office communication concerning this application or proceeding.

Vd

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	09/912,652	SEGAL ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Harry D Wilkins, III	1742	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 12 November 2004 and 07 December 2004.
- 2a) This action is FINAL.                            2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 37,38,40 and 42-51 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 37,38,40 and 42-51 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 24 July 2001 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) All    b) Some \* c) None of:
    1. Certified copies of the priority documents have been received.
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>11/12,12/10</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 37, 38, 40, 42, 43, 46, 47, 50 and 51 are rejected under 35 U.S.C. 103(a) as being unpatentable over "Development of a submicrometer-grained microstructure in aluminum 6061 using equal channel angular extrusion" (*Development*, henceforth) with support from Metals Handbook in view of Park (US 4,589,932) and Dunlop et al (US 5,590,389).

*Development* teaches the invention substantially as claimed. *Development* teaches (see second section "Materials and Experimental Procedures") starting with aluminum alloy billets that have been hot extruded. Billets are ingots that have been subjected to deformation, and ingots are the product of casting, thus, the billets of *Development* are a "cast material" as the material was cast during its production. Next, the alloy is subjected to solution treatment (i.e.-solutionizing). Then the alloy is subjected to a predetermined set of routes of Equal Channel Angular Extrusion (ECAE), which corresponds to the steps of "defining ECAE routes for defining predetermined shear planes and crystallographic directions in the alloy, selecting at least a route from

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the defined routes for plastically deforming the alloy during ECAE and subjecting the alloy to a predetermined number of passes through the selected routes".

Extrusion, as defined by the Metals Handbook (page 15), is the plastic deformation of metal by pressing the metal through a die. Forging, as defined by the Metals Handbook (page 18), is the plastic deformation of metal into desired shapes with compressive forces, with or without dies. Thus, extrusion falls under the broad term forging. Hence, the product of *Development* includes both solutionizing and hot forging.

Regarding any additional steps present in the process of *Development*, the present claims recite a method "comprising the steps of", which is read to leave the method open to additional steps, even those which materially change the method.

Thus, *Development* fails to teach the step of homogenization before the hot forging step.

Park teaches (see title, abstract and col. 5, lines 24-35) performing a homogenizing treatment prior to forging/extruding for the purpose of improving strength and high toughness.

Therefore, it would have been obvious to one of ordinary skill in the art to have applied homogenizing as taught by Park to the cast ingot prior to extruding of *Development* for the purpose of improved strength and toughness. It would have been within the expected skill of a routineer in the art to have applied all three hot steps without intermediate cooling in order to avoid efficiency losses caused by reheating the metal.

Thus, *Development* in view of Park do not teach that the metal composition is one of the compositions disclosed.

However, Dunlop et al teach (see col. 3, line 65 to col. 4, line 27) making sputtering targets using ECAE as is disclosed by *Development* from other compositions, including aluminum (pure and alloys), titanium (pure and alloys), copper (pure and alloys), tantalum (pure and alloys), gold (pure and alloys) and platinum (pure and alloys).

Therefore, it would have been obvious to one of ordinary skill in the art to have applied the methodology of *Development* to any of the disclosed compositions of Dunlop et al because the method of *Development* improves the microstructure of sputtering targets thereby improving sputtering. The same metallurgical principles would apply to these alloys as would apply to the alloy of *Development*, such that one of ordinary skill in the art would have expected the method to produce the same results in other metals.

Regarding claim 38, *Development* teaches (see second column of page 2) that special processing steps were studied, including annealing of the material at 250°C after four passes of ECAE, i.e.-recovery annealing, which would inherently produce a substantially uniform grain size, global microstructure and texture. *Development* in view of Park teach homogenizing, hot forging and solutionizing of the cast material.

Regarding claim 40, *Development* teaches (see second column of page 2) that special processing steps were studied, including intermediate annealing at 250°C of the material after four passes of ECAE, followed by additional stages of ECAE and then

subjecting the material to final annealing, which is a post-extrusion processing to create a specific texture, a uniform grain size and a high texture strength for the alloy.

*Development* in view of Park teach applying homogenizing, hot forging an solutionizing.

Regarding claim 42, *Development* teaches (see second column of page 2) subjecting the material to intermediate annealing between at least some of the passes.

Regarding claim 43, the intermediate annealing of *Development* is at 250°C (see second column of page 2), which is below the beginning stages static recrystallization, i.e.-recovery annealing.

Regarding claim 46, *Development* teaches (see second column of page 2) subjecting the material to annealing after 4 passes.

Regarding claim 47, the annealing of *Development* is at 250°C (see second column of page 2), which is below the beginning stages static recrystallization, i.e.-recovery annealing.

Regarding claim 50, the intermediate annealing of *Development* is at 250°C (see second column of page 2), which is below the beginning stages static recrystallization, i.e.-recovery annealing.

Regarding claim 51, the annealing of *Development* is at 250°C (see second column of page 2), which is below the beginning stages static recrystallization, i.e.-recovery annealing.

3. Claims 44, 45, 48 and 49 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Development* in view of Park and Dunlop et al and further in view of "Stress-Relief Heat Treating of Steel".

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*Development* in view of Park teach, as above in paragraph no. 4, performing the intermediate and/or post-extrusion annealing as a recovery annealing, i.e.-below the beginning stages of static recrystallization, thus, failing to meet the claimed limitations.

However, "Stress-Relief Heat Treating of Steel" teaches (see page 33, 1<sup>st</sup> column) that a heat treatment is applied to workpieces that have developed residual stresses in order to relieve the stresses thereby reducing distortion and preventing stress-corrosion cracking. "Stress-Relief Heat Treating of Steel" teach (see page 33, 2<sup>nd</sup> column) that residual stresses develop during rolling, casting, forging, bending, drawing or machining. Therefore, one of ordinary skill in the art would have expected the material of *Development* to have residual stresses due to the amount of deformation caused by the ECAE. "Stress-relief treatment" and "recovery annealing" are synonyms. (Though "Stress-Relief Heat Treating of Steel" is related to a ferrous metal, the same general metallurgical principles hold true for other non-ferrous alloys, such as aluminum.) Time and temperature were known to be result effective variables (see "Stress-Relief Heat Treating of Steel" at page 33, 3<sup>rd</sup> column), therefore, it would have been obvious to one of ordinary skill in the art to have optimized these process parameters to achieve the proper relief of stresses.

Therefore, it would have been obvious to one of ordinary skill in the art to have applied the intermediate stress-relief treatment of *Development* at a higher temperature, such as at a temperature corresponding to the beginning temperature of full static recrystallization or at a temperature at or above the temperature of full static recrystallization, because the stress-relief treatment reduces stresses that cause brittle

fracture during further cold working (for support see page 33, 1<sup>st</sup> column of "Stress-Relief Heat Treating of Steel").

***Response to Arguments***

4. Applicant's arguments with respect to claims 37, 38, 40 and 42-51 have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

5. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Harry D Wilkins, III whose telephone number is 571-272-1251. The examiner can normally be reached on M-Th 10am-8:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Roy V King can be reached on 571-272-1244. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Harry D Wilkins III*  
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